

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 984 of 2005

with

CIVIL APPLICATION No 3236 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

WADHWAN MUNICIPALITY

Versus

SOMABHAI KHANABHAI PARGHI

Appearance:

MR GAURANG H BHATT for Appellant
..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 20/04/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

The appellant - Wadhwan Municipality has filed this appeal under Section 30 of The Workmen's Compensation Act, 1923 (for short, 'the Act') and challenged the impugned judgment and order dated 24th July, 2002 passed by the Workmen's Compensation Commissioner, Surendranagar in Workmen's Compensation (Non-fatal) Case No.17/97 filed by the respondent original applicant Shri Somabhai Khanabhai Parghi whereby the learned Commissioner partly allowed the application of the applicant and awarded compensation of Rs.61,755/- with simple interest at the rate of 6% from 15th March, 1996.

2. Six substantial questions of law are raised in this appeal by the appellant - Wadhwan Municipality which are as under:-

(A) Whether the Learned W.C. Commissioner is justified in non-appreciating that the actual "Earning" of the said Employee-Workmen even after the said accident, is substantially and considerably much much more than the "Earning Capacity" of the said Employee-Workmen, who has incurred 30% permanent disability due to the said accident, who is standard-12th fail and aged about = 32 years at the time of accident, and, is an unskilled workmen?

(B) Whether the Learned W.C. Commissioner is justified in holding that the said employee-workman who was getting the total emoluments of Rs.2637/- per month at the time of accident in March, 1996, and, is getting the total emoluments of Rs.4,770/- per month, as deposed by him (Exhb.20) on 03.08.2001, from the same employer-appellant, is entitled to relieve Compensation under the W.C. Act, 1923 in view of the fact that there is not at all any monetary loss occasioned to the employee inspite of the said accident in question?

(C) Whether the Learned W.C. Commissioner is justified in holding that the said employee-workman who has been

subsequently provided light-work, after said accident, and, is paid more salary than the Pump-man (Original post), retained very much in continuous service by the said employer - Wadhwan Municipality, is entitled to claim and receive compensation under the W.C. Act, 1923 inspite of the fact that the entire medical expenses were also borne out by the employer-appellant?

(D) Whether the Learned W.C. Commissioner is justified in quantifying the amount of Compensation at Rs.61,755/- in view of having 30% permanent disability to the said employee-workman, aged about 32 years at the time of accident?

(E) Whether the Learned W.C. Commissioner is justified in granting compensation to the employee inspite of his admission in cross-examination (Exhb.20) on 03.08.2001 that the accident had not taken place due to the defect of the machine? Should the employer be saddled with the monetary liability of compensation for the negligence of the said employee-workman?

(F) Whether the Learned W.C. Commissioner is justified in non-appreciating that the actual "Earning" of the employee even after the accident, is considerably much more than the "earning capacity" of the said workman, who has admitted that he had been paid more salary than that of the Pump-man, and also that he is receiving much more monthly emoluments after the said accident?

3. However, learned counsel Shri Gaurang Bhatt for the appellant - Municipality raised only one submission that there was no actual loss caused to the respondent workman because of the injury received by him. Therefore, in view of Section 4(1)(b) of the Act, the learned Commissioner committed grave error in awarding compensation to the respondent workman. He submitted that at the time of accident which took place on 15th March, 1996 at 7.15 a.m., the monthly salary of the respondent was Rs.2,700/-, when he deposed before the court, it was Rs.4,668/- and at present, his salary is much more. In that view of the matter, the learned Commissioner should not have awarded any compensation to the workman. We do not find any substance in this submission.

4. Under Section 4(1) of the Act, the amount of compensation shall be an amount equal to fifty per cent of the monthly wages of the deceased workman multiplied by the relevant factor or an amount of eighty thousand rupees, whichever is more where death results from the injury. Where permanent total disablement results from the injury then, an amount equal to sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor or an amount of ninety thousand rupees, whichever is more. Explanation (1) to Section 4(1) of the Act states that "relevant factor" in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due. Thus, whenever there is a permanent disablement then, the workman is entitled for compensation and it is to be paid as per the relevant factor. It is clear from the impugned judgment and order passed by the learned Workmen's Compensation Commissioner that as per the disability certificate of the respondent workman issued by the Civil Hospital, he had 30% permanent disability. His age was 32, therefore, relevant factor - 203.85 would apply under the Schedule and that his monthly salary was considered to be Rs.2,000/- under the law. Therefore, in our considered opinion, the learned Commissioner has rightly awarded Rs.61,755/- to the respondent workman, even though there was no actual loss suffered by the respondent workman.

5. In view of the above discussion, this appeal fails and is hereby summarily dismissed.

Civil Application is dismissed as the main appeal is dismissed.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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